

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JANET WINSLOW PETERSON AND  
LINDA WINSLOW LAMBRIGHT**

**APPELLANTS-RESPONDENTS,**

**v.  
DISCOVER PROPERTY &  
CASUALTY INSURANCE COMPANY**

**RESPONDENT-APPELLANT.**

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DOCKET NUMBER WD76852 Consolidated with WD76858

DATE: January 13, 2015

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Appeal From:

Buchanan County Circuit Court  
The Honorable Randall R. Jackson, Judge

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Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Alok Ahuja, Chief Judge and Gary D. Witt, Judge

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Attorneys:

Edwin H. Smith, St. Joseph, MO, for appellants-respondents.

Thomas H. Davis, Kansas City, MO, for respondent-appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**JANET WINSLOW PETERSON AND  
LINDA WINSLOW LAMBRIGHT,**

**APPELLANTS-RESPONDENTS,**

**v.**

**DISCOVER PROPERTY &  
CASUALTY INSURANCE COMPANY,**

**RESPONDENT-APPELLANT.**

No. WD76852 Consolidated with WD76858

Buchanan County

Before Division Three: Karen King Mitchell, Presiding Judge, Alok Ahuja, Chief Judge and Gary D. Witt, Judge

After a one-car automobile accident on a bridge, two plaintiffs sought damages for wrongful death and personal injuries against, *inter alia*, the Missouri Highway and Transportation Commission ("MHTC") and one of its contractors, Progressive Contractors, Inc. ("PCI"). As part of bridge repairs, PCI had cut a hole into which the automobile traveled. Appellant/Cross-Respondent Discover Property and Casualty Insurance Company ("Discover") is PCI's insurer and, through an endorsement in the commercial general liability policy, is MHTC's putative insurer.

After extensive litigation, this appeal and cross-appeal derive from an agreement pursuant to Section 537.065 settling claims of wrongful death and personal injury against MHTC and a consent judgment entered thereon. An equitable garnishment action against Discover and related summary judgment proceedings based on the settlement agreement and consent judgment frame the issues.

Appellant/Cross-Respondent Discover claims error 1) in the trial court's reading of the language of the insurance policy that gave rise to the Section 537.065 settlement, 2) in the application of Section 537.065, and 3) as to the assessment of post-judgment interest. Respondents/Cross-Appellants Janet Winslow Peterson ("Janet") and Linda Lambright ("Linda") claim error 1) in two points regarding the trial court's ruling as to the adequacy of one of Discover's affirmative defenses, and 2) in a third point as to the trial court's reduction of the damage amounts in the settlement agreement.

**AFFIRMED IN PART, REVERSED IN PART**

**Division Three holds:**

(1) The plain language of the policy guarantees coverage "to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor." Discover does not contest the trial court's finding of fact that the vehicle drove into a hole in the work zone of the bridge that PCI cut as part of its work. Accordingly, the trial court did not err in determining that Janet and Linda met their burden of proving coverage under an insurance policy.

(2) Discover is not entitled to plain-error review on the matter of whether Section 537.065 authorizes equitable garnishment under the facts of this case.

(3) Discover did not plead ultimate facts in support of its affirmative defense attacking the reasonableness of the wrongful death portion of the settlement. The trial court therefore erred in determining that the settlement amount was unreasonable.

(4) The trial court erred in granting Janet and Linda's Rule 75.01 motion to amend the equitable garnishment judgment to award interest dating back to the consent judgment because it was entered two years before the judgment on the equitable garnishment action.

Opinion by Gary D. Witt, Judge

January 13, 2015

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